IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.1298 OF 1996

Ramchandra Pandu Ganeshkar : Appellant

versus

The State of Maharashtra : Respondent.

ALONG WITH

FIRST APPEAL NO.1237 OF 1996.

Ramchandra Nana Dhanve : Appellant.

versus

The State of Maharashtra : Respondent.

Mr.M.A.Choudhary for the appellants.

Mr.B.R.Patil, Acting Government Pleader for State

CORAM : D.G.DESHPANDE,J.

DATED : 6th April 2005.

ORAL ORDER

1. Both these appeals have been filed by the

original claims against two different orders passed by the Reference Court i.e. The Civil Judge, Sr.Division, Pandharpur awarding Rs.4,000/- per hectare as compensation for the acquired land when the claimants had claimed Rs.10,000/- per hectare. The Special Land Acquisition Officer has awarded Rs.3,000/- per hectare.

2. The lands of the claimants situated at village Borale, Taluka Mangalwedha were acquired and, in order to prove their claims for higher compensation, the claimants relied upon one sale instance of village Borale, that is prior to the notification under Section 4 of the Land Acquisition Act. The date of notification under Section 4 is 10.7.1971 and, three sale instances of village Mangalwedha. The Reference Court, however, observed and held that there was considerable distance between the acquired lands and the lands under sale deeds of Mangalwedha and Borale cannot have same importance as Mangalwedha area and, therefore, sale instance of Mangalwedha cannot be said to be a proper indicator of market value of the lands situated at Borale. Therefore, the Reference Court refused to enhance

the price, but awarded only Rs.4,000/- per hectare.

3. The counsel for the claimants relied upon the judgment or order of the same Court and the same judge delivered one year after in LAR No.287 of 1989 and other LARs. The date of the order is 30th June 1995. In that group of LARs also the acquired lands were from village Borale and the claimants in that group relied upon sale instances of village Mangalwedha. Those sale instances were prior to the notification under Section 4 in that case. But the Court relied upon those sale instances even though it has come on record that the distance between the lands under sale deeds [of Mangalwedha] and the acquire lands was about 1.5 k.m. and, the Court also held that those sale instances of Mangalwedha were relevant for determination of market value of the acquire lands situated at Borale because Borale is adjoining to Mangalwedha. The counsel for the claimants, therefore, contended that if the facts in the present two appeals and the facts in the group of LARs are identical, then Court should have either followed the view earlier taken in that order. But if the Court

has taken different view, then the claimants are entitled to the benefits.

4. I find considerable force in this submission. In the present two appeals, the lands are from Borale and the sale instances of Mangalwedha were relied upon by the claimants, but the Reference Court refused to take them into consideration for the reasons stated above. In the subsequent judgment given in 1995 by the same Court and by the same Judge, the lands were from village Borale and the sale instances of Mangalwedha were relied upon; they were taken into consideration and, consequently compensation was awarded at the rate of Rs.6,000/- per hectare. Therefore, following the same judgment, it has to be held that the claimants in the present two appeals are entitled to the compensation at the rate of Rs.6,000/- per hectare.

5. Counsel for the claimants, however, contended that if the sale instances of village Mangalwedha could be relied upon, then as per those sale instances the price of the acquired lands comes to more than Rs.7,000/- per hectare.

However, there has to be consistency in the findings in respect of the matters similarly situated and, therefore, if in the judgment of 1995 the Court has awarded Rs.6,000/- per hectare, the same has to be awarded in both the present appeals. Hence I pass the following order :-

:ORDER:

Both the impugned orders are modified. The claimants shall be entitled to the compensation at the rate of Rs.6,000/- per hectare with consequential enhancement of statutory benefits.

No order as to costs.

Both the appeals are disposed of along with civil applications.

[D.G.DESHPANDE]

06/04/2005 JUDGE.